IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

SA.No. 676 of 1993(E)

AGAINST THE DECREE AND JUDGMENT DT.31.7.1993 IN AS.38/1990 of SUB COURT, PAYYANNUR

AGAINST THE DECREE AND JUDGMENT DT.12.10.1989 IN OS.37/1984 of MUNSIFF COURT, PAYYANNUR

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APPELLANT/ APPELLANT/ DEFENDANT

THAZHATHE VATTAPARAMBILLATH
GOVINDAN NAMBOODIRI, SON OF
EASWARAN NAMBOODIRI, RAMANTHALI AMSOM,
KUNNARU DESOM, KANNUR DISTRICT.

BY ADV. SRI.K.DIVAKARAN NAIR

RESPONDENT/ RESPONDENT/ PLAINTIFF

THAZHATHE VATTAPARAMBILLATH
EASWARAN NAMBOODIRI,
AGED 51 YEARS, SON OF EASWARAN NAMBOODIRI,
SCHOOL MASTER, RESIDING AT
RAMANTHALI ASMOM, KUNNARU DESOM,
KANNUR DISTRICT.

BY ADV. SRI.M.P.ASHOK KUMAR
SRI.K.V.SOHAN

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 29 /05 /2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.1617/1993 IN SA. NO.676/1993

DISMISSED

29.05.2007 **SD/- M.SASIDHARAN NAMBIAR, JUDGE**

/TRUE COPY/

P.A. TO JUDGE

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M.SASIDHARAN NAMBIAR, J.

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S.A.No. 676 OF 1993

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DATED THIS THE 29th DAY OF MAY, 2007

JUDGMENT

Defendant in O.S.37/1984 on the file of Munsiff Court, Payyannur is the appellant. Plaintiff is the respondent. Plaintiff instituted the suit seeking a decree for permanent prohibitory injunction restraining appellant from trespassing into the plaint schedule property. The case of respondent was that he is in possession of the plaint schedule property as per Ext.A1 gift deed executed by his father Easwaran Namboothiri, who obtained the property under registered marupat 1846/1962 and subsequently respondent purchased jenmom right from the Land Tribunal as per order in O.A. 16658 of 1975 and has been in possession of the property and appellant has no manner of right or possession over the same. Appellant resisted the suit contending that respondent is not in possession of the property and as per the gift deed respondent has two acre and fifty cents and respondent has included one acre and sixty cents belonging to Ganapathi Namboothiri, the brother of appellant as part of the plaint schedule property and without impleading Ganapathy Namboothiri, the attempt is to grab his property and appellant

is in possession of the property belonging to Ganapathi Namboothiri and respondent is not in possession of the same and is not entitled to the decree sought for.

2. Learned Munsiff framed the necessary issues. Though an issue on title was framed, respondent did not pay the court fee as provided under Section 27(a) of Kerala Court Fees and Suit Valuation Act(hereinafter referred to as the `Act'). The learned Munsiff, on the evidence of Pws 1 and 2, DW1, Exts.A1 to A15, B1 and C1 to C4 granted a decree holding that respondent is in possession of 3.94 acres which is marked by the Commissioner in Ext.C3 plan as plot CDFG and appellant is not entitled to interfere with the peaceful possession of the said property by respondent. Appellant challenged the decree and judgment before Sub Court, Payyannur in A.S.38 of 1990. The learned Sub Judge, on reappreciation of evidence, confirmed the findings of the learned Munsiff on the question of possession and confirmed the decree and judgment and dismissed the appeal. It is challenged in the second appeal.

3. Though appeal was admitted and notice was issued, no substantial question of law was formulated at that time to exercise the powers under Section 100 of the Code of Civil Procedure.

4. Learned counsel appearing for the appellant and

respondent were heard.

5. The argument of learned counsel appearing for appellant was that the learned Munsiff considered title also, even though no court fee was paid under Section 27(a) of the Act and when Ganapathi Namboothiri, the brother of appellant was not a party it should not have decided the title and in such circumstances the decree is unsustainable. Learned counsel appearing for the respondent pointed out that though learned Munsiff had considered the question of title, first appellate court considered only the question of possession and upheld the finding of the learned Munsiff that respondent has established his possession of the plaint schedule property, as demarcated by Commissioner in Ext.C3 plan and a decree for injunction was granted and no substantial question of law is involved in the appeal.

6. On hearing learned counsel for both the parties, I do not find any substantial question of law involved in the appeal. The suit is only for injunction. Even though an issue on title was framed, respondent/plaintiff did not pay court fee as provided under Section 27(a) of the Act. In such a case no finding on the question of title can be entered into. Though learned Munsiff considered the question of title, first appellate court rightly considered only the question of possession and upheld the finding on the question of possession, and confirmed the decree

for injunction. As the first appellate court did not consider the question of title and upheld the decree for injunction confirming the finding on the question of possession. I find that no error was committed by the courts below. No substantial question of law is involved in the appeal. It is made clear that the decree granted by learned Munsiff and confirmed by the first appellate court will not affect the right of Ganapathi Namboothiri to agitate the question of title. Learned counsel appearing for appellant expressed an apprehension that the decree in the suit may be used against Ganapathi Namboothiri. When Ganapathi Namboothiri is not a party to the suit, I find no reasonable cause for any such apprehension to be clarified.

Appeal dismissed as no substantial question is involved in the appeal. It is made clear that there is no reasonable cause for such an apprehension as the decree passed without Ganapathi Namboothiri in the party array will not be binding on him.

M.SASIDHARAN NAMBIAR, JUDGE

lgk/-

M.SASIDHARAN NAMBIAR, J

S.A.No.506/1998

JUDGMENT

29.5.2007